

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NETSCOUT SYSTEMS, INC.

Plaintiff,

1

FORESCOUT TECHNOLOGIES, INC

Defendant.

) CIVIL ACTION NO.

) JURY TRIAL REQUESTED

WATTS

MAGISTRATE JUDGE Bowl

COMPLAINT

Plaintiff NetScout Systems, Inc. (“NetScout”), for its Complaint against ForeScout Technologies, Inc. (“ForeScout”) alleges as follows:

NATURE OF THE ACTION

1. In this action, Plaintiff seeks injunctive relief and damages for acts of trademark infringement, dilution, and unfair competition committed by Defendant in selling goods and services under the trademarks FORESCOUT and ACTIVESCOUT, which are confusingly similar to Plaintiff's NETSCOUT® trademark. Defendant's acts violate the laws of the United States, as well as the statutory and common laws of various states, including the Commonwealth of Massachusetts. In particular, this action arises under the federal Lanham Act, 15 U.S.C. § 1051 et seq., the statutory trademark, dilution, and unfair competition laws of Massachusetts, Mass. Gen. Laws ch. 110B, §§ 11 and 12, and ch. 93A, § 11, and the common law of Massachusetts.

JURISDICTION AND VENUE

2. This is an action under the Lanham Act, 15 U.S.C. § 1051 *et seq.* ("Lanham Act"), particularly 15 U.S.C. §§ 1114, 1119, and 1125, for trademark infringement, false designation of origin, false description or representation, and related unfair competition. Plaintiff also asserts claims for trademark infringement and unfair competition under the statutory and common law of states, including Massachusetts, Mass. Gen. Laws. ch. 110B, §§ 11 and 12 (2002), and for unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under state law, including Mass. Gen. L. ch. 93A, § 11 (2002).

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1338(b). This Court also has jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. § 1367(a).

4. Defendant is subject to suit in Massachusetts because, among other reasons, it has or had a reasonable expectation that goods sold or transported under the FORESCOUT and ACTIVESCOUT trademarks are used or are to be used, are sold, or are to be sold in Massachusetts, its tortious conduct has taken place and continues to take place in Massachusetts, and/or it regularly solicits business in Massachusetts and its acts are causing tortious injury in Massachusetts.

5. Venue is proper under 28 U.S.C. §§ 1391(b), and (c) in that, upon information and belief, Defendant is subject to personal jurisdiction in the Commonwealth of Massachusetts and/or the wrongful acts committed by Defendant occurred in and are causing injury in the Commonwealth of Massachusetts.

THE PARTIES

6. Plaintiff is a Delaware corporation with its headquarters at 310 Littleton Road, Westford, Massachusetts 01886.

7. Upon information and belief, Defendant is a Delaware corporation with a principal place of business of 10001 N. De Anza Blvd. Suite 220, Cupertino, CA 95014.

PLAINTIFF AND PLAINTIFF'S TRADEMARKS

8. Founded in 1984, NetScout is one of the world's premier providers of integrated computer network performance management solutions. NetScout currently serves more than 3500 organizations in locations across North America, Europe, and Asia.

9. Since shipping its first product in 1992 – a standards-based Ethernet probe – NetScout has led the market with a continual stream of industry firsts that have evolved into industry standards, including the market's most comprehensive computer network performance management solution. The key features of NetScout's integrated software and hardware solution include computer network monitoring, capacity planning, troubleshooting, fault prevention, and service-level management, all of which maximize the integrity, reliability, availability, performance and efficiency of applications and content delivered over computer networks, supporting the mission critical operations of NetScout's customers.

10. NetScout markets and distributes its products through its own direct sales force and through channel partners that include original equipment manufacturers, distributors, resellers, service providers, and systems integrators. Customers represent a wide range of industries, including financial services, technology, healthcare, retail, manufacturing, and service providers, as well as many large agencies of the federal government.

11. NetScout advertises and sells its products throughout the United States, including in Massachusetts, and throughout the world by means of promotional materials, catalogs, magazines, and similar types of printed literature, as well as over the Internet through its own web site at <www.netscout.com>.

12. At least as early as 1991, and prior to the acts of Defendant complained of herein, Plaintiff adopted and began to use in commerce the inherently distinctive designation and trademark "NETSCOUT" (the "NETSCOUT® Trademark") for and in connection with computer network monitoring software, and related goods and services. Such use has been continuous since that time.

13. Plaintiff has registered the NETSCOUT® Trademark in the United States Patent and Trademark Office (PTO), as well as in Canada, the European Community, and Japan. In the United States, Plaintiff owns the following registrations related to the NETSCOUT® Trademark:

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
NETSCOUT	1,764,154	April 13, 1993
NETSCOUT and Design	2,287,610	October 19, 1999

14. True and correct copies of the Certificates of Registration for Plaintiff's Reg. Nos. 1,764,154 and 2,287,610 are attached hereto as composite Exhibit A.

15. Plaintiff's Reg. No. 1,764,154 has become incontestable, pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and, accordingly, constitutes conclusive evidence of the validity of the registered mark, Plaintiff's ownership of the mark, and Plaintiff's exclusive right to use the NETSCOUT® Trademark in commerce in connection with the goods specified in the Certificate of Registration. A true and correct copy of the Notice of Acceptance of Section 8

Affidavit and Notice of Acknowledgement of Section 15 Affidavit for Plaintiff's Reg. No. 1,764,154 is attached hereto as Exhibit B.

16. Plaintiff's Reg. No. 2,287,610 has become incontestable, pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and, accordingly, constitutes conclusive evidence of the validity of the registered mark, Plaintiff's ownership of the mark, and Plaintiff's exclusive right to use the NETSCOUT and Design[®] Trademark in commerce in connection with the goods specified in the Certificate of Registration. A true and correct copy of the Notice of Acceptance of Section 8 Affidavit and Notice of Acknowledgement of Section 15 Affidavit for Plaintiff's Reg. No. 2,287,610 is attached hereto as Exhibit C.

17. Plaintiff has registered its NETSCOUT trademark in the Commonwealth of Massachusetts and has been issued a Certificate of Registration therefor, Massachusetts Reg. No. 65017. A true and correct copy of the Certificate of Registration for Plaintiff's Massachusetts Reg. No. 65017 is attached hereto as Exhibit D.

18. Since prior to the acts of Defendant complained of herein, Plaintiff has achieved wide-spread and substantial sales of its products designated by the NETSCOUT[®] Trademark throughout the United States, including Massachusetts, and worldwide.

19. The NETSCOUT[®] Trademark is and has been so commonly used by Plaintiff and others to identify Plaintiff's products that said products are now and, since prior to the acts of Defendant complained of herein, have been generally known among the trade and the public by the NETSCOUT[®] Trademark.

20. The NETSCOUT[®] Trademark appears on Plaintiff's computer software and hardware, packaging, user manuals, web site, and other promotional and advertising materials.

DEFENDANTS ACTIVITIES

21. Subsequent to Plaintiff's adoption and use of the NETSCOUT® Trademark in commerce, Defendant filed applications to register the designations FORESCOUT and ACTIVESCOUT both for "computer software designed to provide computer network perimeter security; computer hardware," with the PTO. The applications have been assigned Serial Nos. 78/126,971 and 78/126,968, respectively (the "ForeScout Applications").

22. Subsequent to Plaintiff's adoption and use of the NETSCOUT® Trademark in commerce, Defendant commenced the manufacture, distribution, and/or sale in commerce of software and/or the rendering of services under the FORESCOUT and ACTIVESCOUT trademarks (the "Accused Trademarks") or bearing the Accused Trademarks. Copies of pages from Defendant's web site located at <www.forescout.com>, which display products and services offered under the Accused Trademarks, are attached hereto as composite Exhibit E.

23. Subsequent to Plaintiff's adoption and use of the NETSCOUT® Trademark in commerce, Defendant began promoting and offering for sale products and services bearing the Accused Trademarks via a web site at <www.forescout.com> (the "Domain Name"). See copy of domain name registration information, attached hereto as Exhibit F. This interactive web site is continuously available in Massachusetts, and visitors to the web site can, among other things order and/or view a live demonstration of the products bearing the Accused Trademarks.

24. Upon information and belief, Defendant has distributed, sold, or offered for sale products and services bearing or associated with the Accused Trademarks in the Commonwealth of Massachusetts and in other states.

25. Upon information and belief, Defendant has promoted products and services bearing or associated with the Accused Trademarks, among other things, through sponsorship

and/or participation in industry events in the Commonwealth of Massachusetts and in other states.

26. The Accused Trademarks are confusingly similar to Plaintiff's NETSCOUT® Trademark.

27. The goods provided by Defendant under the Accused Trademarks – computer software designed to provide computer network perimeter security; computer hardware – are highly similar or highly related to the goods provided by Plaintiff under its NETSCOUT® Trademark. In fact, Defendant's products perform network performance management functions such as “monitor[ing] internet traffic,” and “reporting and displaying information about attack attempts...” See Exhibit E.

28. Upon information and belief, Defendant is well aware and, since long prior to the acts of Defendant complained of herein, has been well aware of the goodwill represented and symbolized by the NETSCOUT® Trademark. Upon information and belief, Defendant has been well aware that the NETSCOUT® Trademark is recognized widely and relied upon by the public and the trade as identifying NetScout and its products and as distinguishing said products from the products of others.

29. Notwithstanding that knowledge, and indeed by reason of such knowledge, Defendant engaged in a deliberate and willful scheme to trade upon and to misappropriate for itself the goodwill represented and symbolized by the NETSCOUT® Trademark, by applying to register, adopting, or using in commerce the Accused Trademarks.

30. Defendant's use in commerce of the Accused Trademarks is designed, and is calculated, and is likely to cause confusion, to cause mistake, and to deceive customers and prospective customers as to the source, origin, or sponsorship of Defendant's products, and to

cause consumers mistakenly to believe that Defendant's products are the products of Plaintiff, or are sponsored, licensed, authorized, or approved by Plaintiff, all to the detriment of Plaintiff, the trade, and the public.

31. Defendant's use of the Accused Trademark is without the license, authorization, or consent of Plaintiff.

32. Plaintiff has objected to the use and/or registration of the Accused Trademarks by Defendant. Plaintiff has filed a consolidated opposition proceeding with the Trademark Trial and Appeal Board (TTAB) of the PTO against the ForeScout Applications, which is pending.

33. Defendant has refused to comply with Plaintiff's demands to cease and desist use of the Accused Trademarks or to abandon the ForeScout Applications.

COUNT I – FEDERAL TRADEMARK INFRINGEMENT

34. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 33 as if fully set forth herein.

35. With full knowledge and awareness of Plaintiff's ownership and prior use of the NETSCOUT® Trademark and for their own benefit, Defendant intentionally has used in commerce, and upon information and belief, will continue to use the Accused Trademarks, which use is likely to cause confusion, or to cause mistake, or to deceive.

36. Defendant's aforesaid acts constitute infringement of Plaintiff's federally-registered and incontestable trademarks, in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

37. Defendant's aforesaid acts have caused and will cause irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer irreparable injury.

38. Plaintiff has no adequate remedy at law.

39. Defendant's aforesaid acts have harmed Plaintiff's reputation and have caused damage to Plaintiff in an amount to be determined.

40. Defendant's aforesaid acts have unlawfully enriched and benefited Defendant in an amount to be determined.

**COUNT II – FALSE DESIGNATION, DESCRIPTION,
AND REPRESENTATION UNDER THE LANHAM ACT**

41. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

42. Defendant intentionally has used and, upon information and belief, will continue to use in commerce the Accused Trademarks, which use constitutes a false designation of origin, false or misleading description of fact, or a false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection, or association with Plaintiff, or origin, sponsorship, or approval of Defendant's products by Plaintiff.

43. Defendant's aforesaid acts constitute unfair competition, false designation of origin, and/or false description or representation in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. Defendant's aforesaid acts have caused and will cause irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer irreparable injury.

45. Plaintiff has no adequate remedy at law.

46. Defendant's aforesaid acts have harmed Plaintiff's reputation and have caused damage to Plaintiff in an amount to be determined.

47. Defendant's aforesaid acts have unlawfully enriched and benefited Defendant in an amount to be determined.

COUNT III - COMMON LAW TRADEMARK INFRINGEMENT

48. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 47 as if fully set forth herein.

49. Defendant's acts in promoting and selling products and services that are of substantially the same character as NETSCOUT® products in connection with a trademark that is confusingly similar to Plaintiff's NETSCOUT® Trademark constitutes common law trademark infringement, palming or passing off of Defendant's goods and services as those of Plaintiff, and unprivileged imitation, all of which create in the mind of the public the impression that Plaintiff is responsible for the quality and performance of Defendant's goods and services or is otherwise connected to or associated with Defendant.

50. Defendant's use of a trademark confusingly similar to Plaintiff's NETSCOUT® Trademark constitutes a use of Plaintiff's trademark on and in connection with goods or services that Plaintiff cannot control. Such acts will materially damage the reputation of Plaintiff and that of its goods and services and damage the goodwill in Plaintiff's trademark that has been created by Plaintiff's substantial expenditure of money.

51. Defendant's aforesaid acts constitute trademark infringement and unfair competition, all in violation of Plaintiff's rights under the common law of the Commonwealth of Massachusetts and other states.

52. Defendant's aforesaid acts have caused and will cause irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer irreparable injury.

53. Plaintiff has no adequate remedy at law.

54. Defendant's aforesaid acts have harmed Plaintiff's reputation and have caused damage to Plaintiff in an amount to be determined.

55. Defendant's aforesaid acts have unlawfully enriched and benefited Defendant in an amount to be determined.

COUNT IV – STATE TRADEMARK INFRINGEMENT: MASSACHUSETTS

56. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 55 as if fully set forth herein.

57. Plaintiff is the owner of the Massachusetts Registration for NETSCOUT for computer software and hardware. See Exhibit D. The Certificate of Registration shown in Exhibit D serves as competent and sufficient proof of the registration of Plaintiff's NETSCOUT trademark in Massachusetts.

58. Upon information and belief, Defendant has used and will continue to use the Accused Trademarks in Massachusetts, which use is likely to cause confusion or to cause mistake or to deceive as to the source or origin of Defendant's goods or services, all in violation of Plaintiff's rights under Massachusetts law. Such use by Defendant is without Plaintiff's consent.

59. Defendant's aforesaid acts constitute infringement of Plaintiff's registered trademark, in violation of Mass. Gen. Laws ch. 110B, § 11 (2002).

60. Defendant's aforesaid acts have caused and will cause irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer irreparable injury.

61. Plaintiff has no adequate remedy at law.

62. Defendant's aforesaid acts have harmed Plaintiff's reputation and have caused damage to Plaintiff in an amount to be determined.

63. Defendant's aforesaid acts have unlawfully enriched and benefited Defendant in an amount to be determined.

COUNT V – STATE TRADEMARK DILUTION: MASSACHUSETTS

64. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 63 as if fully set forth herein.

65. The NETSCOUT® Trademark is distinctive and, through long and extensive use, advertising, marketing, and public awareness, possesses a high degree of distinctiveness, including in Massachusetts.

66. Upon information and belief, Defendant has used and will continue to use the Accused Trademarks in Massachusetts, which use has injured and will continue to injure Plaintiff's business reputation and/or has diluted and will continue to dilute the distinctive quality of Plaintiff's NETSCOUT® Trademark.

67. Defendant's aforesaid acts are likely to injure the business reputation of Plaintiff or likely to dilute the distinctive quality of Plaintiff's NETSCOUT® Trademark, in violation of Mass. Gen. Laws ch. 110B, § 12 (2002).

68. Defendant's aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer great and irreparable injury.

COUNT VI – UNFAIR TRADE PRACTICES: MASSACHUSETTS

69. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 68 as if fully set forth herein.

70. Defendant's acts and practices described above constitute unfair methods of competition and/or unfair or deceptive acts or practices declared unlawful by Mass. Gen. Laws ch. 93A, § 11 (2002), and were committed by Defendant primarily and substantially in the Commonwealth of Massachusetts and in knowing and willful violation thereof.

71. Defendant's aforesaid acts have harmed Plaintiff's business reputation, severely damaged Plaintiff's goodwill, and upon information and belief, have unjustly enriched Defendant.

72. Defendant's aforesaid acts have injured and will continue to injure Plaintiff's business reputation and have diluted and will continue to dilute the distinctive quality of Plaintiff's Trademarks.

73. Defendant's aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer great and irreparable injury.

74. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays:

A. That this Court adjudge that the NETSCOUT® Trademark has been infringed and diluted as a direct and proximate result of the acts of Defendant as set forth in this Complaint, in violation of Plaintiff's rights under the Lanham Act, 15 U.S.C. § 1051 et seq., and the statutory and common laws of Commonwealth of Massachusetts and other states.

B. That this Court adjudge that Defendant have competed unfairly with Plaintiff as set forth in this Complaint, in violation of Plaintiff's rights under the Lanham Act, the General Laws of Massachusetts, and the common laws of the Commonwealth of Massachusetts, and other states.

C. That this Court deny the registration of the ForeScout Applications by the United States Patent and Trademark Office.

D. That Defendant, and all officers, directors, agents, servants, employees, affiliates, attorneys, successors, and assigns, and all persons in active concert or participation therewith, be preliminarily and permanently enjoined and restrained:

1) From using the Accused Trademarks, or any designation or trademark similar thereto, in any way, including in the Domain Name or any other domain name or web address, in connection with computer software or hardware, or any other related goods or services; and

2) From doing any other act or thing likely to cause the public or the trade mistakenly to believe that there is any connection between Defendant and Plaintiff, or their respective products and/or services; and

3) From otherwise infringing or diluting any trademark owned by Plaintiff or engaging in unfair competition against Plaintiff.

E. That Defendant be required to deliver up for destruction all products, packaging, signs, prints, promotional materials, advertisements, and other written or printed materials that bear the Accused Trademarks, or any trademarks similar thereto.

F. That Plaintiff recover Defendant's profits and the damages of Plaintiff arising from Defendant's acts of trademark infringement, dilution, false designation of origin, false description or representation, and unfair competition.

G. That this Court treble such amounts awarded as allowed by § 35 of the Lanham Act, 35 U.S.C. § 1117, and multiple and/or punitive damages as allowed by federal and other state law.

H. That this Court award Plaintiff multiple damages as allowed by Mass. Gen. Laws ch. 93A, and other federal and state law.

I. That Plaintiff recover both pre-judgment and post-judgment interest on each and every award.

J. That Plaintiff recover its reasonable attorneys' fees incurred in this action, as provided for under federal and state law.

K. That Plaintiff has and recover its taxable costs and disbursements incurred in this action.

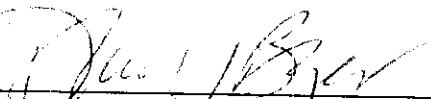
L. That Plaintiff has other and such further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Date: May 5, 2005

NETSCOUT SYSTEMS, INC.
By its attorneys,



David J. Byer (BBO# 544411)
Deborah J. Peckham (BBO# 564865)
Kirkpatrick & Lockhart Nicholson Graham LLP
75 State Street
Boston, MA 02109-1808
Telephone: (617) 261-3100
Facsimile: (617) 261-3175

BOS-818682-1

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,764,154
Registered Apr. 13, 1993

**TRADEMARK
PRINCIPAL REGISTER**

NETSCOUT

FRONTIER SOFTWARE DEVELOPMENT, INC.
(MASSACHUSETTS CORPORATION)
1501 MAIN STREET, SUITE 39-40
TEWKSBURY, MA 01876

FOR: SOFTWARE FOR USE ON LOCAL
AREA NETWORKS AND WIDE AREA NET-
WORKS TO ANALYZE NETWORK INFORMA-
TION TRAFFIC FOR THE PURPOSE OF MEAS-
URING NETWORK PERFORMANCE AND ISO-

1ATING AND DIAGNOSING ERRORS,
DELAYS AND FAULTS, IN CLASS 9 (U.S. CL.
38).

FIRST USE 10-7-1991; IN COMMERCE
10-7-1991.

SER. NO. 74-220,917, FILED 11-8-1991.

DOMINIC J. FERRAIUOLO, EXAMINING AT-
TORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,287,610

United States Patent and Trademark Office

Registered Oct. 19, 1999

TRADEMARK
PRINCIPAL REGISTER



NETSCOUT SYSTEMS, INC. (DELAWARE
CORPORATION)
4 TECHNOLOGY PARK DRIVE
WESTFORD, MA 01886

FIRST USE 3-31-1997; IN COMMERCE
3-31-1997.

OWNER OF U.S. REG. NO. 1,764,154.

SER. NO. 75-516,167, FILED 7-9-1998.

DAVID M. MERMELSTEIN, EXAMINING ATTORNEY

FOR: COMPUTER PROGRAMS FOR MONITORING AND MANAGING COMPUTER NETWORK TRAFFIC AND COMPUTER NETWORK DIAGNOSTIC SOFTWARE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, VA 22202-3513

REGISTRATION NO. 1764154 SERIAL NO. 74/220917

PAPER NO.
MAILING DATE: Aug 30, 1999

MARK: NETSCOUT

FSP-601

REGISTRANT: NETSCOUT SYSTEMS, INC.

CORRESPONDENCE ADDRESS:

JOSEPH G HADZIMA JR
TESTA HURWITZ & THIBEAULT
TRADEMARK ADMINISTRATOR
125 HIGH ST
BOSTON MA 02110

TMPPRU

Please furnish the following
in all correspondence:

1. Your phone number and ZIP Code.
2. Mailing date of this action.
3. Affidavit-Renewal Examiner's name.
4. Mark all correspondence to the
attention of "PRU" using the above
address.
5. Registration No.

RECEIPT IS ACKNOWLEDGED OF THE SUBMITTED REQUEST UNDER:

SECTION 8 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.161-2.166.

SECTION 15 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.167-2.168.

YOUR REQUEST FULFILLS THE STATUTORY REQUIREMENTS AND HAS BEEN ACCEPTED.

A. J. Gore

A. J. GORE
AFFIDAVIT-RENEWAL EXAMINER
TRADEMARK EXAMINING OPERATION
(703) 308-9500 EXT. 129



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 2287610 SERIAL NO: 75/516167 MAILING DATE: 12/16/2004

REGISTRATION DATE: 10/19/1999

MARK: NETSCOUT AND DESIGN

REGISTRATION OWNER: Netscout Systems, Inc.

CORRESPONDENCE ADDRESS:

Jennifer K. Lawson
TESTA HURWITZ & THIBEAULT LLP
ATTN: Trademark Administrator
125 HIGH ST
BOSTON MA 02110

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(1)

THE COMBINED AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF ACKNOWLEDGEMENT

15 U.S.C. Sec. 1065

THE AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 15 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1065.

ACCORDINGLY, THE SECTION 15 AFFIDAVIT IS ACKNOWLEDGED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):

009.

ROBERSON, FAITH
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION

(703)308-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION
ORIGINAL**

REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION

I) SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration.

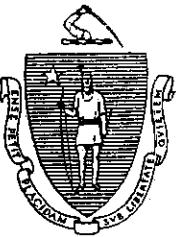
Failure to file the Section 8 Affidavit will result in the cancellation of the registration.

II) SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration.

Failure to file the Application for Renewal will result in the expiration of the registration.

**NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE.
IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE
EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.**



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Corporations Division

#:65017

Mark: NETScout

TM

Dear Registrant:

Enclosed please find an approved copy of your Trademark or Servicemark application. This certificate of registration will be effective for a period of ten (10) years from the date stamped on the back. The registration number, which appears in the top right corner of the front of the form, should be used when requesting information, copies, or notifying this office of an address change.

Within six (6) months of the expiration of your term of registration a notification will be sent to the last address of record. Notices will not be sent to the law firm which may have filed the original application.

The appropriate symbol to indicate state registration is "TM" or "SM". The symbol used for a federal registration is an "R" within a circle. This symbol may not be used unless your mark is registered with the Patent and Trademark Office in Washington, DC. For federal information and forms, call (703) 308-4357.

This office is not permitted to give legal advice regarding infringement of your Trademark or Servicemark. If you need information on name disputes or Trademark or Servicemark infringement, please consult an attorney.

Office of the Secretary of the Commonwealth

One Ashburton Place
Trademark Division
Boston, MA 02108

65017

Fee: \$50.00

The Commonwealth of Massachusetts

William Francis Galvin
 Secretary of the Commonwealth
 One Ashburton Place, Boston, Massachusetts 02108-1512

APPLICATION FOR REGISTRATION OF A TRADEMARK
 (General Laws, Chapter 110B, Section 2)

1. Name of applicant: NetScout Systems, Inc.
2. (a) Principal business address: 310 Littleton Road, Westford, MA 01886
 (b) *Business address in Massachusetts, if any:
3. State whether applicant is an individual, partnership, corporation, union or association: corporation
4. If a corporation, the state of incorporation is: Delaware
5. Describe mark:
 The mark is: NETSCOUT
6. Describe the specific goods in connection with which the mark is used:
 Computer software and computer hardware
7. Class No.: 9
8. The mark is used by displaying it:
 - directly to the goods
 - directly to the containers for the goods
 - by displaying it in physical association with the goods in the sale or distribution thereof
 - in other fashions (explain):
9. Date of first use of mark by applicant or predecessor. If first use of mark was in Massachusetts, use the same date in both (a) and (b).
 - (a) Anywhere: 10/07/91
 - (b) In Massachusetts: 10/07/91
10. If either of the above first uses was by a predecessor of the applicant, state which use or uses were by a predecessor and identify that predecessor: The first uses anywhere and in Massachusetts on 10/07/91 were by a predecessor of the applicant, Frontier Software Development, Inc.

State of: Massachusetts

County of: Middlesex

Name of applicant: (signatory) Todd E. Johnson
 Signature of applicant: Todd E. Johnson
 Title: Director of Legal Services

Note: This document must be notarized - see reverse side.
 *Fill in only if principal business address is not in Massachusetts

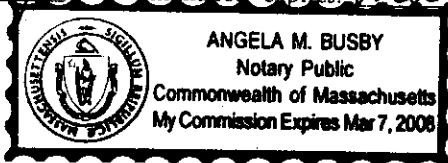
Todd E Johnson, being duly sworn, deposes and says that he is the Dir. of Legal Servs of the above named applicant, that the statements contained in the foregoing statement are true and that he verily believes that said applicant is the owner of the mark sought to be registered and that no other person has the right in the Commonwealth of Massachusetts to use such mark either in the identical form thereof, or in such near resemblance thereto, as to be likely, when applied to the goods or services of such person, to cause confusion or to cause mistake or to deceive.

SUBSCRIBED and sworn to before me this 13 day of November, 2004.

Notary Public: Angela M Busby

My commission expires:

March 7 2008



*Please print the name and address in the space provided below of the person to whom you wish this application to be sent.

At #23777
the 4th of November, 2004

CERTIFICATE OF REGISTRATION
OF A TRADEMARK

General Laws, Chapter 110B, Section 4
NOV 04 2004

Filed with
William Francis Galvin,
Secretary of the Commonwealth
Trademark Section
One Ashburton Place, Rm. 1712
Boston, MA 02108



William Francis Galvin
Secretary of the Commonwealth
Trademark Section
One Ashburton Place, Rm. 1712
Boston, MA 02108

NetScout Systems: Unified Network and

Jennifer K. Lawson, Esq.

 NetScout.

Testa, Hurwitz & Thibeault, LLP

125 High Street, High Street Tower

Boston, MA 02110

	Intelligent Intrusion Prevention™
Company	Products
Solutions	Partners
News & Events	Contact
Support	

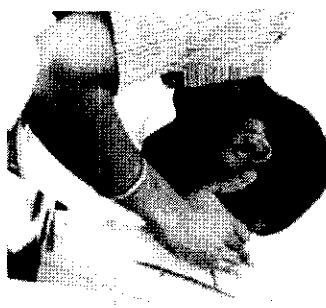
Stop Hacker & Automated Attacks from Disrupting Your Business.

Automatic

100% Automatic Blocking.

No Signatures. No Prior Knowledge of the Attack.

Zero latency, zero point-of-failure.



Discover ForeScout's unique

Technology

Customer Validation Solutions



Request a free trial



ForeScout Technologies chosen as a premier vendor to present at an exclusive Emerging Security Technology Forum sponsored by the Department of Homeland Security.

ForeScout and Apanti Networks Forge Alliance To Provide Innovative Enterprise Security Solution

SIRVA Chooses ForeScout to Ensure Network Continuity During Worm Outbreaks

CounterACT
Instantly identify and block/contain threats emanating from inside your network — espionage, self-propagating threats.

ActiveScout
Instantly stop threats from breaching your perimeter by denying malicious sources with proven intent and automatically blocking them at the source.

ForeScout Launches Free Service That Monitors Network Threats and Alerts Subscribers With Accurate, Actionable

Data

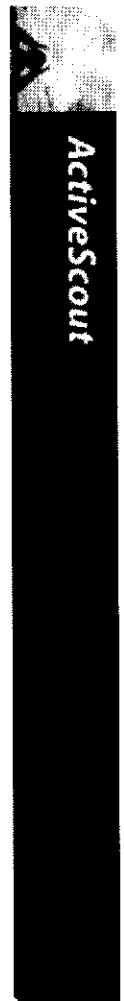
Find out why 100% of our
customers have their ForeScout
appliances set to automatic
blocking mode.



ACTNet System
Accurate Containment of Threats Network
is a global network of security sensors
ensuring a reliable computing
environment by stopping threats BEFORE
they get to your network



ActiveScout



CounterACT

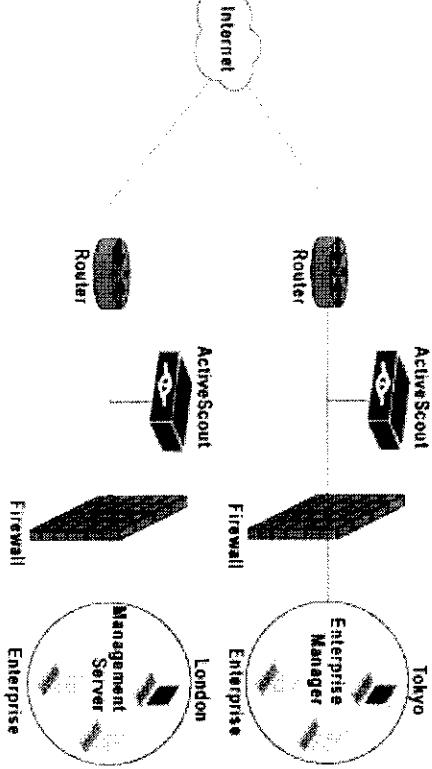
3 Proven
Attack
Features
Scout
Proven
Firewall
Defense
Center
Case
Studies
FAQ's
Resource
Library



ActiveScout actively protects networks from external threats. Accurate identification of an attacker's proven intent allows ActiveScout to stop attacks before they reach your network. ActiveScout is truly a set it and forget it solution that you can trust to stop known and unknown threats.

- [Download Datasheet](#)
- [Request a demonstration](#)
- Key Benefits**
- Absolute Accuracy
- Prevention of Known & Unknown Threats
- Instantaneous Protection
- Minimal Cost of Prevention

The ActiveScout Enterprise consists of three components:



Scouts

The Scouts are positioned outside firewalls and actively monitor internet traffic for signs of pre-attack activity. The Scout is responsible for accurately identifying

attackers, 'marking' them as potential threats and automatically blocking any attempt they make to return. Multiple Scouts are deployed in the Enterprise solution to protect the network's distributed access points.

Management Server

The Management Server controls the activity and policy of Scouts distributed across the enterprise, reporting and displaying information about attack attempts, identification, and prevention measures that occur at each location.

Enterprise Manager

The Enterprise Manager is a Java-based application that provides comprehensive management of all Scouts. Residing on any point of the network, it presents a visual overview of threat prevention activity - including a geographical representation of potential attackers and the preventive steps that were taken against them.



ActiveScout

CounterACT

ActiveScout

• Phage ActiveScout
• Intruder
• Network
• Prevention
• Detection
• Response

Welcome to the ActiveScout Demo Center. This is the place where you can do more than read about our solutions and technology. You can learn about our intrusion prevention process and watch how it works.

→ *ForeScout Technology*



→ *ActiveScout Product Demonstration*



Demo Support
If you have any questions about the demo, please contact us at demo@forescout.com



Learn how ActiveScout's unique 3 phased intrusion prevention process accurately and automatically blocks attacks. [View>](#)



Experience a live network being protected real-time and see accurate identification of attackers from around the world. [View>](#)



Thank you for your interest in viewing the ForeScout demo.

Please provide the information below. You will be receiving an email with a link that will allow you to access the demo.

(*Required Fields)

First Name*:

Last Name*:

Company*:

Title:

State/Province*
(If US/Mexico/Canada):

Country*:

Zip/Postal Code*
(If US/Canada):

E-mail*:

Phone Number*:

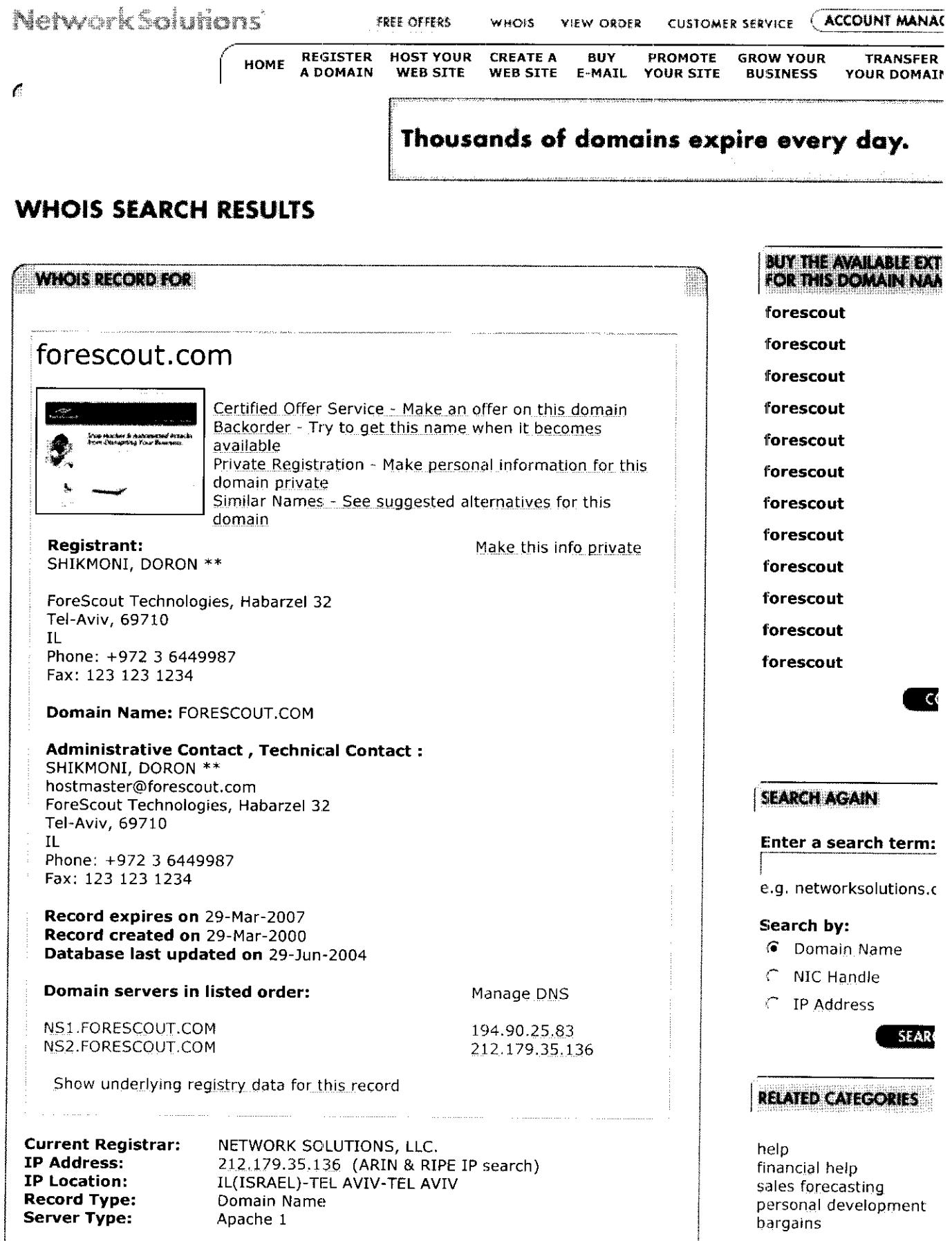
Industry:

Company Size*:

Timeframe? :

Please keep me informed about ForeScout news and events.

Yes



Lock Status:	REGISTRAR-LOCK
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Secure:	No
E-commerce:	No
Traffic Ranking:	Not available
Data as of:	21-Jun-2004

financial assistance
self help
fortune telling
low prices
humanitarian aid

POPULAR CATEGORIES

Travel
Car Rental
Hotels
Airline

Financial Planning
Debt
Credit Cards
Loans

Business and Finance
Affiliate Program
Student Loans
Stocks

Is the name you
want here

VIEW

Keyword Alert Service
A **FREE** service to find
the domain you want easily

When you register a domain name, current policies require that the contact information for your domain name registrant be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information, visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee the accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use the Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or facsimile; (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its computer systems). The use of repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Network Solutions. You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. Network Solutions reserves all rights and remedies it now has or may have in the future, including, but not limited to, the right to terminate access to the WHOIS database in its sole discretion, for any violations by you of these terms of use, including without limitation excessive querying of the WHOIS database or for failure to otherwise abide by these terms of use. Network Solutions reserves the right to modify these terms at any time.



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

NetScout Systems, Inc.

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kirkpatrick & Lockhart Nicholson Graham LLP
75 State Street, Boston, MA 02109-1808; (617) 261-3100

DEFENDANTS

ForeScout Technologies, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Coleman & Weinstein
410 Park Avenue, 15th Floor, New York, NY 10022

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	PRISONER PETITIONS	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	Habeas Corpus:	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	12 USC 3410
REAL PROPERTY	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
--	---	--	---	--	---	--

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C Section 1051, et seq.Brief description of cause:
Trademark infringement and related unfair competition under federal and state law

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

unspecified

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 5, 2005
FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
--	---

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Massachusetts on the following Patents or Trademarks:

DOCKET NO.	DATE FILED May 5, 2005	U.S. DISTRICT COURT Massachusetts	
PLAINTIFF NetScout Systems, Inc.		DEFENDANT ForeScout Technologies, Inc.	
PATENT OR TRADEMARK NO.		DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,764,154		4/14/1993	NetScout Systems, Inc.
2 2,287,610		10/19/1999	NetScout Systems, Inc.
3			
4			
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.		DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy